

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Commission's Rules Regarding)	
the Pricing of Unbundled Network Elements)	WC Docket No. 03-173
and the Resale of Service by Incumbent Local)	
Exchange Carriers)	

**Comments of
The Nebraska Rural Independent Companies**

I. Introduction

The Nebraska Rural Independent Companies¹ (the "Nebraska Companies") hereby submit comments in the above captioned proceeding. With this Notice of Proposed Rulemaking² ("NPRM") the Federal Communications Commission (the "Commission") launches a comprehensive review of the Total Element Long Run Incremental Cost ("TELRIC") methodology that was adopted for the pricing of unbundled network elements ("UNEs") seven years ago.

While many rural incumbent local exchange carriers ("ILECs") have not provided UNEs because they have not received interconnection requests, rural ILECs, such as the Nebraska Companies, have negotiated agreements for the transport and termination of traffic from wireless carriers. Due to the fact that the volume of terminating wireless

¹ Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., Hooper Telephone Company, K&M Telephone Company, Inc., NebCom, Inc., Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Pierce Telephone Co., Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

² See *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173, FCC 03-224 ("TELRIC NPRM") (rel. Sept. 15, 2003).

traffic is growing, the potential revision of rules that establish the basis of pricing for wireless transport and termination is of great importance to rural companies. Therefore, in these comments, the Companies focus specifically on questions posed which would affect the pricing of transport and termination.

II. This NPRM Could Revise Pricing Standards for Reciprocal Compensation, and as such, its Critical Links to Intercarrier Compensation and Universal Service for Rural Companies should be Recognized.

In the *Local Competition Order*,³ the Commission decided that TELRIC pricing, which was ordered to be used for pricing UNEs, was also appropriate for the pricing of reciprocal compensation under section 251(b)(5) of the Telecommunications Act of 1996 (“the Act”). The Commission indicates in the *TELRIC NPRM* that it sought comment in the pending *Intercarrier Compensation*⁴ proceeding on the interpretation of the “additional cost” standard for pricing reciprocal compensation contained in section 252(d)(2) of the Act.⁵ In the *TELRIC NPRM*, the Commission asks parties to address whether the Commission should continue to apply the same pricing rules to UNEs and to reciprocal compensation.⁶ As such, the Commission establishes a clear link between the *TELRIC NPRM* and the *Intercarrier Compensation NPRM*.

While the two dockets are related in that they both ask questions regarding the appropriate pricing standard for reciprocal compensation, the *Intercarrier Compensation*

³ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 16023 (1996) (“*Local Competition Order*”) at para. 1054.

⁴ See *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9646 (2001) (“*Intercarrier Compensation NPRM*”) at para. 101.

⁵ See *TELRIC NPRM* at para. 148.

⁶ *Ibid.*

proceeding is not cross-docketed with the *TELRIC NPRM*. The Nebraska Companies find this especially troubling, as the title of the *TELRIC NPRM*, Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers, also does not indicate that the NPRM addresses the pricing of reciprocal compensation. Furthermore, many rural companies, like the Nebraska Companies, have not been engaged in proceedings regarding the pricing of UNEs and resale, as such companies are exempt from providing UNEs and resale unless the conditions set forth in section 251(f)(1) of the Act are satisfied. On the other hand, many rural companies have an interest in the determination of pricing rules for reciprocal compensation for transport and termination, as they are seeking compensation from wireless carriers for the provision of transport and termination.

This compensation is critical to recovering the costs of rural networks that are caused by provisioning of transport and termination of other companies' traffic. Rural ILECs have faced significant burdens in reaching interconnection agreements with wireless carriers that indirectly terminate their traffic to ILECs by way of Regional Bell Operating Companies' access tandem switches.⁷ Transport and termination of this traffic that is subject to reciprocal compensation pricing rules is a necessary component of a balanced universal service cost-recovery system, along with access charges, local service rates, subscriber line charges and explicit universal service support. Therefore, the

⁷ See, for example, Before the Nebraska Public Service Commission, *In the Matter of the Petition of Great Plains Communications, Inc. for Arbitration to Resolve Issues Relating to an Interconnection Agreement with WWC License L.L.C.*, Application No. C-2872, Interconnection Agreement Approved as Modified, ("Great Plains Arbitration Order") (entered Sept. 23, 2003) at paras. 3-4. WWC License, L.L.C. had been terminating traffic to Great Plains Communications, Inc. for a period of over five years. A period of eight months elapsed from filing for arbitration until a final decision was rendered.

implications of the TELRIC pricing rules on universal service for rural customers and companies must be fully recognized and linked in ensuing stages of this proceeding. Additionally, the Commission should directly reference the TELRIC docket and its importance to intercarrier compensation and universal service in any upcoming proceedings it undertakes in its intercarrier compensation docket, CC Docket No. 01-92. Any decisions that result from this docket need to take into full account the impacts on intercarrier compensation mechanisms, and thus on universal service, in rural America.

III. The Same Pricing Rules Should Continue to be Used for Pricing UNEs and Reciprocal Compensation.

The Commission notes that in the *Local Competition Order*, it decided that TELRIC pricing, which it adopted for pricing UNEs, was also the appropriate method to price reciprocal compensation under Section 251(b)(5) of the Act.⁸ The Commission asks whether it should continue to apply the same pricing rules to UNEs and to reciprocal compensation.⁹ The Commission also asks “[w]hat would be the consequences of having different pricing regimes for these two different functions?” The Nebraska Companies believe that it is appropriate and essential that the same pricing rules be applied to UNEs and reciprocal compensation. As discussed below, applying different pricing rules would exacerbate arbitrage opportunities, and may not provide incentives for efficient facilities investment.

In the *Local Competition Order*, the Commission concluded that the pricing standards established by Section 252(d)(1) of the Act for interconnection and unbundled elements, and by Section 252(d)(2) of the Act for transport and termination of traffic

⁸ See *TELRIC NPRM* at para. 148.

⁹ *Ibid.*

were sufficiently similar to permit the use of the same general methodologies for establishing rates under both statutory provisions.¹⁰ The statutory standards for pricing have not been changed since the Commission rendered this conclusion; therefore, the Nebraska Companies believe that this conclusion remains valid and that TELRIC methods should continue to be used for the pricing of transport and termination.

In addition to its finding that the pricing standards in the Act for unbundled network elements and for transport and termination are similar, the Commission found that there is some substitutability between the use of unbundled network elements for transporting traffic and the use of transport under Section 252(d)(2) of the Act.¹¹ The Commission indicated that “[d]epending on the interconnection arrangements, carriers may transport traffic to the competing carriers’ end offices or hand traffic off to competing carriers at meet points for termination of calls on a carrier’s own network.”¹² In its proceeding on developing a unified intercarrier compensation regime, the Commission indicated its concern about opportunities for regulatory arbitrage created by what it described as “. . . the existing patchwork of intercarrier compensation rules.”¹³ If the Commission were to adopt a different standard for pricing unbundled elements and transport and termination, which it has found to be substitutable, the Commission would be further adding to opportunities for regulatory arbitrage.

The Commission indicates that it sought comment in the *Intercarrier Compensation* proceeding on whether a different interpretation of the “additional cost”

¹⁰ See *Local Competition Order* at para. 1054.

¹¹ Ibid.

¹² Ibid.

¹³ *Intercarrier Compensation NPRM* at para. 11.

standard in Section 252(d)(2) of the Act was warranted. Specifically, the Commission asked “[w]hat would be the implications of using short-run incremental costs when determining the ‘additional costs’ incurred in terminating calls that originate on another carrier’s network?”¹⁴ Short-run incremental costs are determined by assuming that resource commitments such as investments cannot be instantaneously adjusted; therefore, the capacity of a telecommunications network cannot be adjusted to the optimal level under this calculation of cost. The average incremental costs calculated under the current TELRIC standard assume that all costs are variable and avoidable;¹⁵ therefore, the investment in the telecommunications network can be optimized to the current total demand.

The Commission stated that it initiated the *TELRIC NPRM* “. . . to consider whether our pricing methodology is working as intended and, in particular, whether it is conducive to efficient facilities investment.”¹⁶ (emphasis added) A pricing methodology that encourages efficient facilities investment would adequately compensate carriers for investments that are optimized to provide capacity necessary to serve the current total demand. Therefore, the average incremental cost calculated using the TELRIC standard would encourage efficient facilities investment. On the other hand, a pricing methodology based on short-run incremental costs could either over- or under-compensate a carrier for its costs relative to the optimal level of investment. If, in the short run, a carrier did not have investment sufficient to serve the current demand, the

¹⁴ Id. at para. 101.

¹⁵ See *Local Competition Order* at para. 677.

¹⁶ *TELRIC NPRM* at para. 3.

carrier would be undercompensated for its costs. Conversely, if a carrier had excess capacity, it is likely that the carrier's investment costs would be greater than necessary to serve the total current demand, resulting in costs in excess of costs determined using the TELRIC standard. In either case, the use of a short-run incremental costing methodology would not send the appropriate pricing signals to carriers to adjust their investment levels to serve the total current demand, which would be the efficient level of investment.

IV. Changes in Rate Structure Requirements Should not be Made Without Considering the Potential Impact on Cost Recovery for Transport and Termination Costs.

The Commission seeks comment on whether, and under what circumstances, changes are needed to its rate structure requirements.¹⁷ Specifically, the Commission asks “[w]ould it be appropriate to require that switching costs be recovered solely through flat-rated charges? What are the benefits and drawbacks of such an approach?”¹⁸

As discussed above, the Nebraska Companies recommend that the Commission should continue to use the TELRIC pricing standard for both UNEs and transport and termination, as the TELRIC standard is conducive to efficient facilities investment. If the Commission continues to use the TELRIC pricing standard for pricing transport and termination, it must recognize that changes to its current rate structure requirements, especially rate structure requirements related to switching, could have a profound impact on a carrier's ability to maintain sufficient cost recovery for providing transport and termination.

¹⁷ Id. at para. 132.

¹⁸ Ibid.

In the *Local Competition Order*, the Commission identified local switching costs that constitute the “additional cost” to the LEC of terminating a call that originates on a competing carrier’s network. The Commission found that “. . . once a call has been delivered to the incumbent LEC end office serving the called party, the ‘additional cost’ to the LEC of terminating a call that originates on a competing carrier’s network primarily consists of the traffic-sensitive component of local switching.”¹⁹ The Commission also found that the costs of local loops and line ports associated with local switches do not vary in proportion to the number of calls terminated over these facilities, and thus should not be considered “additional costs.”²⁰ The Commission allowed LECs to recover the portion of the forward-looking, economic cost of end-office switching that is recovered on a usage-sensitive basis through termination charges.²¹ However, the Commission did not allow for the recovery of flat-rated local switching for costs such as line ports through termination charges.²²

If the Commission were to require that switching costs be recovered solely through flat-rated charges, it would preclude cost recovery for termination, as its rules do not allow for flat-rated termination charges. Such a rule change seems contrary to the Commission finding regarding the “additional costs” of local switching discussed above. If the Commission had believed that there were no “additional costs” associated with termination, it would not have ruled that charges for the traffic-sensitive portion of local switching costs were appropriate charges for termination. As discussed below, the

¹⁹ *Local Competition Order* at para. 1057.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

Nebraska Companies believe that evidence indicates that a portion of local switching costs are usage-sensitive, and are appropriately recovered through a usage-based charge for termination.

The Nebraska Public Service Commission (“NPSC”) recently dealt with the issue of whether switching costs are usage sensitive in reviewing an arbitrator’s decision on the proper structure and rates for transport and termination between Great Plains Communications, Inc., a rural ILEC, and WWC License L.L.C., a commercial mobile radio service (“CMRS”) carrier. The NPSC found that Great Plains “. . . presented credible evidence to support the conclusion that the switch investment included in its FLEC Study is properly classified as usage sensitive.”²³ This evidence included non-port factors that are considered in switch design including toll usage, local phone usage and EAS.²⁴ The NPSC indicated that compliance with its service standards affects the amount of switch capacity that must be engineered by a LEC.²⁵ Furthermore, the NPSC cited testimony noting that “. . . vendor ordering information relies on busy-hour estimates for all users of the switch and that the processor and matrix costs are based on these estimates and are traffic sensitive.”²⁶ Finally, the NPSC stated that “. . . switch costs should be shared by users of switching resources” and found that a minute-of-use charge for switching was appropriate.²⁷

²³ *Great Plains Arbitration Order* at para. 39.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Id.* at para. 40.

The Nebraska Companies believe the NPSC made the correct decision in ruling that switching costs are usage sensitive and should be paid by other carriers through minute-of-use termination charges. It is appropriate that all carriers that use a network pay for the share of costs associated with their network use.

V. TELRIC Prices Should Continue to be Based on a Long-run Average Cost Methodology.

The Commission tentatively concludes that its TELRIC rules should more closely account for the real-world attributes of the routing and topography of an incumbent's network in the development of forward-looking costs.²⁸ Given this tentative conclusion, the Commission asks whether such a conclusion would “. . . compel us to shift from a long-run average cost methodology to a short-run average cost methodology?”²⁹

As indicated throughout this filing, the Nebraska Companies believe that a long-run average cost methodology will best allow the Commission to achieve its goal of adopting a pricing methodology that is conducive to efficient facilities investment.³⁰ The Nebraska Companies believe that the use of a long-run average cost methodology is consistent with the tentative conclusion that TELRIC rules should more closely account for the real-world attributes of the routing and topography of an incumbent's network. In fact, the only instance in which the use of a long-run average cost methodology would be inconsistent with this tentative conclusion is if the incumbent would design its network in a much different manner than it exists today. While some changes to network routing and topography might be made if LECs were designing their networks in a “scorched

²⁸ See *TELRIC NPRM* at para. 52.

²⁹ *Id.* at para. 55.

³⁰ *Id.* at para. 3.

earth” mode, the Nebraska Companies believe that the changes would not be great enough to cause a significant difference in costs. Therefore, the Nebraska Companies recommend that the Commission maintain the use of a long-run average cost methodology to determine prices for UNEs and for transport and termination.

VI. Conclusion

The Nebraska Companies appreciate the opportunity to comment on the Commission’s review of the TELRIC pricing methodology it established to price UNEs and transport and termination. While many rural ILECs have not provided UNEs, the pricing of transport and termination is a critical issue for such companies, as they have CMRS traffic terminating to their networks. Appropriate pricing for transport and termination is necessary to maintain a balance in cost recovery among local rates, universal service, access and other forms of intercarrier compensation.

The Commission should continue to use the TELRIC pricing rules for the pricing of transport and termination. As the Commission itself observed, UNEs can be substituted for transport and termination. Therefore, adopting different pricing standards for UNEs and for transport and termination would introduce opportunities for regulatory arbitrage. Furthermore, the use of a short-run incremental cost methodology to price transport and termination would not send appropriate pricing signals to either users of such services or the ILEC providing the services. This would not result in efficient facilities investment, which is a primary concern of the Commission in initiating this proceeding.

The Nebraska Companies urge the Commission not to make changes to rate structure requirements without considering the potential impact of such changes on cost

recovery for transport and termination. For example, the Commission asks if it would be appropriate to require that switching costs be recovered solely through flat-rated charges. Given the Commission's current rules regarding transport and termination, requiring the recovery of switching costs through flat-rated charges would preclude cost recovery for termination, as the Commission has ruled that termination costs can only be recovered on a usage-sensitive basis. The NPSC has recently found that switch investment is usage sensitive, and has allowed a rural ILEC to charge usage-sensitive rates for termination. The Nebraska Companies believe that the evidence and reasoning used to reach this finding are sound, and recommend that the Commission maintain usage-based pricing for switching.

Finally, the Nebraska Companies recommend that the Commission continue to base TELRIC pricing on a long-run average cost methodology. The Commission has tentatively concluded that its TELRIC rules should more closely account for the real-world attributes of the routing and topography of an ILEC's network. The Nebraska Companies do not believe that these "real world attributes" differ significantly from the routing and topography that would occur if an ILEC's network were designed from "scorched earth." Therefore, the costs would not be significantly different under the two scenarios. Furthermore, the Nebraska Companies believe that a long-run average cost methodology will best allow the Commission to achieve its goal of adopting a pricing methodology that is conducive to efficient facilities investment.

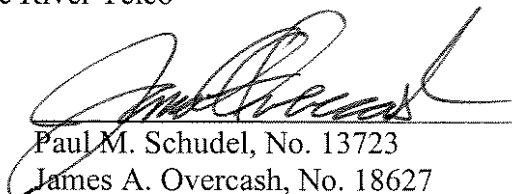
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Respectfully submitted,

**The Nebraska Rural Independent
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